

Turkish Patent and Trademark Office Publishes Guide for Proving Use of Trademarks

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The Turkish Patent and Trademark Office ("**TPTO**") has published a guide ("**Guide**") outlining the factors which it considers when assessing proof of use under Article 19 of Industrial Property Law ("**IP Law**"). The TPTO aims to harmonize Turkish intellectual property law and practice with the EU's approach. Accordingly, the Guide takes the EUIPO and European Court of Justice's case law into account.

In opposition proceedings based on similarity, where the opponent's trademark is registered for five or more years, the TPTO is entitled to ask (at the applicant's request) for proof of the use, as of the filing date or date of priority of the later trademark application. If the opponent does not prove its use, the opposition will not be accepted. If the use only covers some goods and services for which the basis trademark is registered, the opposition will only be examined in terms of these limited goods and services.

The Guide states that a request for proof of use should be clear, explicit and unconditional. A proof of use request must be made within one month of the TPTO notifying about the trademark opposition.

When proving use, the Guide states that evidence should be submitted within one month after receiving the request. No new evidence can be submitted after this period. If no proof of use is submitted, the TPTO will not further assess the subject trademarks within the opposition.

The Guide states that evidence should be explicit, clear and reliable enough to enable the parties to evaluate them and reach an opinion without further inquiry. It should include information on the nature, manner, place, time and scope of use in relation to the goods and services the trademark in dispute is registered for, should be included.

The Guide outlines examples of evidence of use as including.

- Sales invoices.
- Catalogues.
- Price lists.
- Product codes.
- Product samples.
- Packaging.
- Shop signs.
- Commercial videos.
- Advertisement images.
- Invoices for promotions and attended fairs.
- Market research and surveys.
- Information on business activity.
- Statements from experts or involved people, such as suppliers and customers.

The Guide explains the types of use which can form the basis for opposing a trademark registration:

- Use by the owner themselves, or by an authorized third party.
- Use within the five years before the date of the disputed application or priority right.

- Use in a distinctive manner (for example, on the product itself or on the packaging).
- Use as the trademark was originally registered: Using the trademark with different elements may also suffice as proof, provided the trademark's distinctiveness is not compromised. However, the trademark's use does not necessarily need to match how it was registered.
- Genuine use: Extensive use of the trademark in a manner to make it recognized in the market, as well as to distinguish it from other enterprises' goods or services, either in the market or places which may influence the market.
- It is not necessary to use the trademark across all of Turkey. Use in a very limited part or region is sufficient, provided the use is genuine.
- Proof of non-use: If some obstacle hindered use of the trademark during the relevant period, the owner may prove non-use for good reasons. The obstacle must be independent of the trademark owner's will and beyond their control, as well as also not be attributed to the owner's behaviour.

Please see this link for the full text of the Guide (only available in Turkish).

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